

City of Bryan Note: This attachment includes deviations submitted by ABM Janitorial Sevices.

DEVIATIONS FROM SPECIFICATIONS

Bid Sheets - Cont.
(Page 16 of 18)

Bidder must itemize all deviations taken to the specifications here. Unless otherwise stated by the bidder in the space provided below, the proposal or bid will be considered as being in strict accordance with the terms, conditions and specifications outlined herein. Note: Certain contract requirements are non-negotiable. Failure to bid in accordance with the terms of this RFB may cause your bid to be rejected.

Section/Item
&

Page Number

Specification

Proposed Alternative

Our exceptions/comments to this Request for Proposal are found on the
attached pages. _____

Company Name: Bonded Maintenance Co. dba ABM Janitorial Services

TERMS AND CONDITIONS

Contract Termination

The City may terminate this Contract at any time upon thirty (30)-calendar days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall cease work immediately. Service Provider reserves the right to terminate this Contract at anytime, without penalty or default, by providing thirty (30) days written notice to the City. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

If, through any cause, the Service Provider fails to fulfill its obligations under this Contract, or if the Service Provider violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Service Provider five (5) calendar days written notice. The Service Provider will be compensated for the services satisfactorily performed before the termination date. Termination of the contract for cause shall be deemed as sufficient evidence and cause to remove the Vendor's name from the bidder's list for receiving future bids.

No term or provision of this Contract shall be construed to relieve the Service Provider of liability to the City for damages sustained by the City because of any breach of contract by the Service Provider provided that Service Provider's obligations with respect thereto shall not exceed those set forth in the Liability Paragraph included herein. The City may withhold payments to the Service Provider for the purpose of setoff until the exact amount of damages due the City from the Service Provider is determined and paid.

Payment of Invoices

Invoices must be submitted by the successful bidder in duplicate to the City of Bryan, Finance Department, P.O. Box 1000, Bryan, Texas 77805, (979) 209-5080. Invoices for Bryan Texas Utilities must be submitted by the successful bidder in duplicate to Bryan Texas Utilities, Accounts Payable, P.O. Box 1000, Bryan, Texas 77805. All invoices to be paid in full within thirty (30) days after satisfactory delivery and billing, whichever is the later. All invoices shall be submitted in accordance with the bid unit prices. Invoices shall not contain work that was not satisfactorily completed. A late charge for the lesser of 1.5% per month, or the maximum rate permitted by law shall be paid by the City to Service Provider on any past due payment not received within 15 days after the payment due date. If the City's account is referred to an agency or attorney for collection, the City shall reimburse Service Provider for its attorney's fees and collection costs. Upon the expiration of this contract's term and any extensions, it will convert to a month-to-month agreement, with all other terms and conditions continuing in full force and effect. If this Contract is cost plus, the City acknowledges that Service Provider may receive discounts or rebates from suppliers based on volume or other factors, which are the sole property of Service Provider and are not credited to the City. The City acknowledges and agrees that agreed upon costs and insurance rates may exceed Service Provider's actual cost or the amount billed to Service Provider. Repeated failure on the part of the Contractor to submit accurate invoices shall be sufficient cause to cancel the contract. The City will not be liable for payment of invoices received more than sixty (60) days after delivery of order, or completion of services.

Liability

The successful bidder shall be liable for all damages incurred while in the performance of services pursuant to this request but only to the extent that same are/is caused by the negligence, misconduct or other fault of Service Provider, its agents or employees.

Patents, Franchises, etc.

The successful bidder agrees to protect the City from any claim involving patent right infringements, copyrights or sales franchises but only to the extent that same is caused by the negligence, misconduct or other fault of successful bidder, its agents or employees.

PROVISIONS FOR BIDDING TO THE CITY OF BRYAN

- 4.0 All prices quoted shall include delivery expenses of supplies, materials and equipment and tools to job site including unloading. The Contractor shall be fully responsible for receiving, unloading and storing all deliveries intended for the job. The City will not be liable for any loss or damage to supplies, materials, tools and equipment left on the job unguarded, by the Contractor before, during or after job is performed except to the extent any loss or damage is caused by the negligence, misconduct or other fault of the City, its agents or employees.
- 6.0 All work is to be preformed in a professional manner by skilled personnel and proper equipment. The work shall be planned so as not to unreasonably interfere with or create a hazardous condition to the regular operation of the department or division of the City.
- 11.0 Indemnification: The Contractor shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description, including reasonable attorney's fees expenses brought for or on account of any injuries or damages received or sustained by any person or persons or property, by or from the said Contractor or his employees or by or in consequence of any negligence in safeguarding the work, or through the use of unacceptable materials in construction of the work, or by or on account of any act or omission, neglect or misconduct of the said Contractor, or by or on account of any claims of amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and so much of the money due the said Contractor under and by virtue of his contract as shall be considered necessary by the City may be retained for the use of the City, or in case no money is due, his sureties shall be held until suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to that effect furnished the City. Notwithstanding the above, Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause ~~regardless of whether the injury or damage is caused in part by the City, its officers, agents or employees only to the extent that any loss, liability, damage or expense is caused by the negligence, misconduct or other fault of Contractor, its agents or employees.~~
- 16.0 Final Acceptance: The Contractor will be paid within thirty (30) days after final acceptance provided the Contractor has furnished the City satisfactory evidence that all sum of money due for any labor, materials, equipment or machinery furnished for and used in the prosecution of the work, or that the person or persons to whom the same may respectively be due have consented to such final payment. (The City reserves the right to retain five percent (5%) of the total contract price until such evidence is furnished). The acceptance by the Contractor of the last final payment shall operate as and shall release the City from all claims and liabilities for payment for services rendered under the Contract ~~or for any act of neglect of said City relating to or connected with the contract.~~

17.0 Insurance Requirements:

ADDITIONAL INSURED ENDORSEMENTS The Contractor agrees to endorse the City as an Additional Insured (but only to the extent that same is indemnified pursuant to Paragraph 11.0 hereof) on each insurance policy required to be maintained, with the exception of the worker's compensation and employers' liability policy.

WAIVER OF SUBROGATION ~~Waiver of subrogation in favor of the City of Bryan for each required policy. The City of Bryan, Contractor and their insurers waive all claims and rights of subrogation to the extent that losses would be coverable under a fire and extended coverage insurance policy.~~ When required by the insurer or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

**SPECIFICATIONS FOR CITY OF BRYAN
ANNUAL CONTRACT FOR CUSTODIAL SERVICES**

Quality of Service

Quality of service is a major consideration in the award of this contract. The City retains the option to terminate the contract with written notice due to Contractor's noncompliance with any term condition or requirement of this contract after Contractor has received notice and a reasonable opportunity to cure.

CUSTODIAL SPECIFICATIONS

RFB #06-077

SECTION A: MUNICIPAL FACILITIES

PART 1

4. Building Access: The City shall issue two (2) master keys and/or two (2) key fobs to each facility to the Contractor for access to the work sites. In the event either or both of the master keys are altered, duplicated, misplaced or lost, the Contractor shall incur ~~all~~ reasonable cost associated with the re-keying of the facility in question at an estimated cost of \$1500.00 but only to the extent that any loss, liability or expense is caused by the negligence, misconduct or other fault of Contractor, its agents or employees. Key fob replacement cost is \$50.00 if lost or stolen.

8. Personnel: The Contractor's personnel shall, at all times, present a neat appearance including the mandatory outward display of Contractor's company personnel I.D. Proof of background checks on any potential contractor employees will be submitted prior to them working on City of Bryan property; the time requirement for the reports is two (2) days in advance. The Contractor shall utilize competent employees in performing the work specified in this agreement. At the request of the City's Designated Representative, the Contractor will replace any incompetent, abusive or disorderly person in its employ to the extent permitted by law and any applicable collective bargaining agreement. In addition to the above, the Contractor is required to provide semi-annual background checks via the service offered by the Texas Department of Public Safety for all personnel at its employ working on City of Bryan property. All cost associated with these background checks shall be the responsibility of the contractor.

CUSTODIAL SPECIFICATIONS
RFB #06-077

SECTION B: PARKS

PART 1

4. Building Access: The City of Bryan shall issue two (2) master keys to each facility for access to the work site. In the event either or both of the master keys are altered, duplicated, misplaced or lost, the contractor shall incur ~~all-reasonable~~ cost associated with re-keying of each facility in question at an estimated cost of \$300.00 only to the extent that any loss, liability, damage or expense is caused by the negligence, misconduct or other fault of Contractor, its agents or employees.

EXHIBIT A

CONTRACT for Annual Contract for Custodial Services

2. Payment

In consideration of the Service Providers provision of the services in compliance with all terms and conditions of this Contract, the City shall pay the Service Provider according to the terms set forth in Exhibit A, RFB#06-077, "Annual Contract for Custodial Services." Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all services provided under this Contract may not exceed \$. Payment shall be due within 30 days after the earlier of the date of the invoice, or the last day of each month for which services were performed. A late charge for the lesser of 1.5% per month, or the maximum rate permitted by law shall be paid by the City to Service Provider on any past due payment not received within 15 days after the payment due date. If the City's account is referred to an agency or attorney for collection, the City shall reimburse Service Provider for its attorney's fees and collection costs. Upon the expiration of this contract's term and any extensions, it will convert to a month-to-month agreement, with all other terms and conditions continuing in full force and effect. If this Contract is cost plus, the City acknowledges that Service Provider may receive discounts or rebates from supplier based on volume or other factors, which are the sole property of Service Provider and are not credited to the City. The City acknowledges and agrees that agreed upon costs and insurance rates may exceed Service Provider's actual cost or the amount billed to Service Provider.

4. Warranty, Indemnification, Release & Insurance

B. The Service Provider shall promptly correct any defective work furnished by the Service Provider at no cost to the City but only to the extent that same are/is caused by the negligence, misconduct or other fault of Service Provider, its agents or employees. The City's approval, acceptance, use of, or payment for, all or any part of the services hereunder itself shall in no way alter the Service Providers obligations or the City's rights hereunder.

D. The Service Provider must at all times exercise reasonable precautions on behalf of, and be ~~solely~~ responsible for, the safety of its officers, employees, agents, subcontractors, licenses, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Service Provider, its officers, employees, agents, subcontractors, invitees, licensees and other persons.

F. **Release.** The Service Provider release, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Service

Provider or its employees and any loss of or damage to any property of the Service Provider or its employees ~~that to the extent that same~~ is caused by ~~or alleged to be caused by, arises out of, or is in connection with~~ the Service Provider's negligent performance of the work. Both the City and the Service Provider expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

G. Insurance.

ADDITIONAL INSURED ENDORSEMENTS The Contractor agrees to endorse the City as an Additional Insured (but only to the extent that same is indemnified pursuant to Paragraph 4. E hereof) on each insurance policy required to be maintained, with the exception of the worker's compensation and employers' liability policy.

WAIVER OF SUBROGATION ~~Waiver of subrogation in favor of the City of Bryan for each required policy. The City of Bryan, Contractor and their insurers waive all claims and rights of subrogation to the extent that losses would be coverable under a fire and extended coverage insurance policy.~~ When required by the insurer or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

DEDUCTIBLES, COINSURANCE, PENALTIES, & SELF-INSURED RETENTION To the extent of its indemnification obligations set forth in Paragraph 4.E above, Contractor shall agree to be fully ~~and solely~~ responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

5. Termination

A. The City may terminate this Contract at any time upon thirty (30) calendar days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall cease work immediately. Service Provider reserve the right to terminate this Contract at any time, without penalty or default, by providing thirty (30) days written notice to the City. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

C. No term or provision of this Contract shall be construed to relieve the Service Provider of liability to the City for damages sustained by the City because of any breach of contract by the Service Provider provided that Contractor's obligations with respect thereto shall not exceed those set forth in Paragraph 4.E hereof. The City may withhold payments to the Service Provider for the purpose of setoff until the exact amount of damages due the City from the Service Provider is determined and paid.